



Isiah Leggett
County Executive

OFFICE OF THE COUNTY ATTORNEY

Marc P. Hansen
County Attorney

October 23, 2012

Emmet C. Davitt, State Prosecutor
Office of the State Prosecutor
Hampton Plaza
300 East Joppa Road
Suite 410
Towson, MD 21286-3152

Re: County Advocacy of Ballot Questions

Dear Mr. Davitt:

Thank you for speaking with me Monday evening. As promised, I am writing in response to your October 22, 2012, letter asserting that the use of County resources in support of two ballot questions (to appear as Questions A and B on this November's ballot) may violate the State's campaign finance law as well as State law (Article 24, Section 13-105) regarding the use of County employees for "political activity" during working hours. I respectfully ask that you reevaluate your conclusion in light of the following.

The campaign finance law issue arose two years ago when a County law establishing an Emergency Medical Services Transport Insurance Reimbursement Program was petitioned to referendum. At that time, I asked Jeffrey Darsie, the Assistant Attorney General representing the State Board of Elections, whether the State's campaign finance laws applied to the County's defense of that legislation. As with Questions A and B, the County at that time used its resources to advocate to voters that they should support the EMS fee. As you can see from his email (attached), he agreed that "a county is not a political committee within the meaning of Section 1-101(gg) of the Election Law Article, and that use of county resources to communicate with the public as to a local ballot question is not 'campaign finance activity' within the meaning of the campaign finance statutes. It is my further view that such activity is not a reportable in-kind contribution to any other ballot issue committee." Mr. Darsie went on to write

Following our conversation, I spoke with various officials at the State Board familiar with campaign finance and with the State Board's past practices and administrative interpretations. Neither they nor I know of any instances where the State Board has attempted to apply the campaign finance laws to the official activities of State or county government, nor any case where a local government

had filed a political committee. This seems fortunate. Application of campaign finance rules to the operations of local government would probably soon result in a chaos of conflicting duties for the officials involved.

With regard to the remaining issue, my office previously researched the matter and concluded that the use of County employees to support ballot questions does not violate Article 24. Section 13-105's prohibition against the use of government employees for "political activity" during working hours. I concluded that the Section 13-105 applied only to partisan or personal political activity; it was not intended to impose a gag order, preventing the government from defending its policies in the court of public opinion. A copy of the opinion elucidating the reasons for that conclusion is attached.

I am disappointed that you would threaten to prosecute unidentified County employees and officials. These individuals have done nothing more than give voice to the County's official position in support of Questions A and B in this November's ballot. These Questions directly impact on the County's duly enacted policies; again the County is NOT taking a position on matters that are partisan or unrelated to legitimate government interests. The government, no less than any other stakeholder, is entitled to use its resources to advocate in favor (or against) laws or proposed Charter amendments that appear on the ballot. Indeed, the County, as do most Maryland Counties, has an entire office (Office of Intergovernmental Relations) dedicated to advocacy in support (or against) laws and policies at the State and Federal level that the County determines would be in (or against) the interests of its residents. If County residents feel that their interests are not appropriately represented by their elected officials, their solution lies at the ballot box, not in the courthouse dock.

I am confident that once you have taken the time to research the issues raised, beginning with a review of the attached materials, you will similarly conclude that County officials and employees have acted appropriately. If you think it appropriate, I am certainly open to asking the Attorney General for a formal opinion on these admittedly complex issues.

In light of your demand that the County immediately cease activity that I have determined is legal, I ask that you provide a response as soon as possible.

I would be happy to meet with you if you think a meeting would be helpful.

Very truly yours,

Handwritten signature of Marc P. Hansen in cursive, followed by the initials "EBZ".

Marc P. Hansen
County Attorney

Emmet C. Davitt, State Prosecutor

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Attachments

cc: Timothy Firestine, Chief Administrative Officer (w/ attachments)
Patrick Lacefield, Director, Public Information Office (w/ attachments)
Steve Farber, Council Staff Director (w/ attachments)
Michael Faden, Sr. Legislative Attorney, County Council (w/ attachments)
John Markovs, Deputy County Attorney (w/ attachments)
Edward Lattner, Chief, Division of Human Resources and Appeals (w/ attachments)

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